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9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 LAZARO BANDA-GAXIOLA)

Criminal No. 09-CR-1904-L
Civil No. 11-CV-2421-L

12)
13) Petitioner,

14 v.)

15) UNITED STATES OF AMERICA,

16) Respondent.
17)

**ORDER DISMISSING WITH
PREJUDICE PETITIONER'S
MOTION FOR REDUCTION OF
SENTENCE UNDER 28 U.S.C. § 2255**

18 On October 17, 2011, Petitioner Lazaro Banda-Gaxiola ("Petitioner") filed a Motion for
19 Reduction of Sentence pursuant to 28 U.S.C. § 2255. Petitioner essentially requests that this
20 Court grant a downward departure of up to two points due to Petitioner's immigration removal
21 status. The Court has reviewed the record in this case, which clearly establishes that on May 31,
22 2011, Petitioner waived both his right to appeal and to collaterally attack his conviction and
23 sentence. (Plea Agreement ¶ XI.) Petitioner's motion raises no challenge to the validity of that
24 waiver, therefore this Court lacks jurisdiction to consider any collateral challenge to his
25 conviction and sentence. *See Washington v. Lampert*, 422 F.3d 864, 869-70 (9th Cir. 2005)
26 (recognizing that if sentencing agreement's waiver of the right to file a federal habeas petition
27 was valid, district court lacked jurisdiction to hear the case).
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1 Accordingly, Petitioner's Motion For Reduction of Sentence pursuant to 28 U.S.C. §
2 2255 is **DISMISSED WITH PREJUDICE.**

3 **IT IS SO ORDERED.**

4 DATED: October 21, 2011

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6 
M. James Lorenz
United States District Court Judge

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10 COPIES TO:
11 PETITIONER
12 U.S. ATTORNEY'S OFFICE
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